IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 32241 of 2006(L)

OS.213/1995 of II ADDL.SUB COURT,TRIVANDRUM

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PETITIONER:

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1. K.V.RADHA,LAL BHAVAN, PALLINADA, KAZHAKUTTOM, THIRUVANANTHAPURAM.

2. R.SREELETHA,SANDHYA HOUSE FROM LAL BHAVAN, KULATHUR, THIRUVANANTHAPURAM.

3. R.SREEKALA,SREENILAYAM FROM LAL BHAVAN, POWDI KONAM, THIRUVANANTHAPURAM.

4. R.SREELAL, PARIYARATHU FROM LAL BHAVAN, NEDUMANGAD, THIRUVANANTHAPURAM.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM.

2. THE DEPUTY COLLECTOR (L.A.), COLLECTORATE, THIRUVANANTHAPURAM.

3. THE SPECIAL TAHSILDAR, ADDL. L.A. UNIT, CONVENT ROAD, THIRUVANANTHAPURAM.

4. KAZHAKUTTOM PANCHAYAT, REPRESENTED BY ITS SECRETARY, KAZHAKUTTOM PANCHAYAT, THIRUVANANTHAPURAM.

5. TECHNO PARK, REPRESENTED BY ITS SPECIAL OFFICE, OFFICE OF THE TECHNO PARK, VAZHUTHACAUD, THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioners' Exts:

Ext.P1 true copy of the plaint in OS 213/1995

Ext.P2 true copy of the decree dated 7.8.1997 in OS 213/1995

Ext.P3 true copy of the affidavit and petition dated 15.10.1999 in OS 213/1995.

Ext.P4 true copy of the order dated 15.2.2003 in IA 4374/1999 in OS 213/1995

Ext.P5 true copy of the judgment dated 23.12.2005 in CMA 150/2003.

M.N.Krishnan, J.

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W.P(C).No.32241 of 2006

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Dated this the 16th day of October, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the District Judge, Thiruvananthapuram in C.M.A.No.150 of 2003. At the outset I may like to say that the technical objection sustained by the court below cannot be found fault with. But at the same time, it is the duty of the court to render justice to a party when a mistake is committed by the court itself.

2. It is revealed from the facts of the case that the plaint was rejected under Order 7 Rule 11 of C.P.C. for non-payment of court fee. But the real fact is that the court fee has been paid and so the rejection of the plaint under that Rule should not have been resorted to by the court. Normally when such a mistake is brought to the notice of the court, the court can always invoke its inherent jurisdiction to do justice to the party and pass appropriate orders. Unfortunately, in this case, both the courts

below had relied more on technical and legal objection than rendering substantial justice to the party which he is entitled to in the light of the specific facts and circumstances of the case.

3. It is true that an application was filed under Order 41 Rule 19 with Order 47 Rule 1 of C.P.C. as well and certainly now it is the settled position of law that when a plaint is rejected it amounts to a decree and therefore it can be appealed against or this Court had held that a review application also can be filed in such circumstances. First court considered it as a review application, but dismissed the review application on the ground that there was no reason to condone the delay. Second court, namely, the District Court, said that the appeal is not maintainable and on facts also held that without a petition to condone the delay, the matter cannot be entertained. In the facts and circumstances of the case, now what is brought to the notice of the court by filing a review application is to correct the mistake committed by the court in rejecting the plaint for non-payment of court fee when really the court fee has been paid. So, it is in a way to correct the mistake committed by the court, the application was filed. Actually, the court should have taken

that application as an intimation to the court to correct the mistake and should not have resorted to technicalities to dismiss the petition.

4. Therefore, I set aside the orders passed by the District Judge as well as the Subordinate Judge and allow the review application and direct the court to restore the suit back to file and dispose of the matter in accordance with law. Parties are directed to appear before the court below on 17.11.2007 and being an old matter of 1995, the parties are to co-operate with the court for an expeditious disposal of the case, within a time frame of four months from the date of first appearance.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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